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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. [redacted] 80

314-706

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

THE BANK OF NOVA SCOTIA
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 993

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit entered in this cause on December 18, 1940, affirming the order or decree of the District Court of the United States for the District of Puerto Rico approving the receiver's final report and distribution in a consolidated foreclosure suit and overruling the objections of this petitioner, The People of Puerto Rico, that the Court had failed to give priority to some $100,000.00 of deferred taxes, as required by the statutes of Puerto Rico.

SUMMARY STATEMENT

1. The suit was a consolidation of several foreclosure suits against the Benitez Sugar Company and the part-

nership or "community" [Spanish *"Comunidad"*], "Jose J. Benitez e Hijos", hereinafter called, for convenience, *"the community"*, and other parties.

On September 18, 1939, at its May Term, 1939,[1] the District Court entered a foreclosure decree, foreclosing mortgages held by the Bank of Nova Scotia, the respondent here, on properties of the sugar company and of the community, ordering their sale by a special master and distribution of the proceeds in accordance with priorities fixed by the decree. This petitioner, The People of Puerto Rico, was claiming first priority, ahead of the bank's mortgages, for the unpaid real estate taxes, in two categories; viz., *first,* those for the current year and the three preceding fiscal years; and *second,* those for earlier fiscal years, which had been "deferred" by the Treasurer upon applications made by the receiver on or about September 21, 1938 [R. 62, 66], upon orders of the District Court of July 9, 1937 [R. 62, 66], under Act No. 23 of the Legislature of Puerto Rico of July 16, 1936, as amended by Act No. 122 of May 13, 1937 (Appendix III, *infra,* pp. 51-57).

That statute authorized the Treasurer to defer the collection of unpaid real estate taxes, and spread the payment over a term of twenty years; and Section 5 of the Act expressly provided (Appendix III, *infra,* pp. 52-53):

> "The amount of the deferred-tax receipts issued under this Act shall constitute *a preferred lien* on the property subject to the unpaid and deferred tax. *This lien shall have preference and priority over any other lien which already burdens* or may be hereafter constituted on said premises. * * *," (*Italics supplied*)

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[1] Section 42 of the Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951, 966) provides:

> "Regular terms of the said United States district court shall be held at San Juan, commencing on the first Monday in May and November of each year."

and expressly amended prior statutes accordingly.

The District Court in its foreclosure decree of September 18, 1939, allowed priority over the mortgages to the unpaid taxes for the current year and the preceding three fiscal years, amounting only to some $5,000; but [notwithstanding the statute] *denied priority to the unpaid deferred taxes* for the earlier years, aggregating something over $100,000, and held them subordinate to the bank's mortgage liens (R. 62-68; 72-73; 81-82). In so doing the District Court followed its own earlier decisions in two foreclosure suits brought by the Federal Land Bank of Baltimore,[2] wherein it had held on February 27, 1939, and had reiterated the holding on March 10, 1939, that the Legislature of Puerto Rico was without power, in extending past due taxes, to provide that the taxes so extended should constitute a lien prior to a mortgage which, before the enactment of that statute, had stood ahead of all taxes except those for the current year and the three preceding fiscal years. The District Court considered that

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[2] Equity No. 2284 in the District Court, the *Federal Land Bank of Baltimore*, complainant, vs. *Emiliano Torres Garcia, et al.*, defendants; and Equity No. 2229, the *Federal Land Bank of Baltimore* vs. *Dominga Tirado, et al.*, defendants. Decision in the *Emiliano Torres Garcia* case, February 27, 1939 (Appendix I, *infra*, pp. 38-41); followed March 10, 1939 by that in the *Dominga Tirado* case (Appendix I, *infra*, pp. 36-38). The records in both cases included in the same printed transcript of the record in the Circuit Court of Appeals for the First Circuit, there entitled (the two cases in the one transcript) "No. 3458, The People of Puerto Rico, appellant, v. Federal Land Bank of Baltimore, plaintiff-appellee; and No. 3459, *Same* v. *Same*." **A certified copy of that transcript is filed in this Court with this petition for certiorari.** In that transcript the decision of the District Court, *supra*, February 27, 1939, in the *Torres Garcia* case appears on pages 48 to 50; and the District Court's decision of March 10, 1939, in the *Dominga Tirado* case appears on pages 22 to 24 of the transcript.

such action by the Legislature "would be a violation of the terms of the Organic Act which prohibits the Legislature from passing any law which will impair the obligation of contracts" [District Court's decision in the *Torres Garcia* case, *supra*; Appendix I, *infra*, p. 40; followed in the *Dominga Tirado* case, *supra*, Appendix I, *infra*, p. 37].

Both of those Federal Land Bank decisions were pending, undecided, in the Circuit Court of Appeals for the First Circuit on appeal from the District Court, on September 18, 1939, the date of the entry of the foreclosure decree in the present case; which simply followed them, without further argument, in denying priority to the deferred taxes in this case ("Conclusions of Law", "(E)", R. 72-73). The District Court did, however, insert in the foreclosure decree, as its final paragraph, the following (R. 85):

> "O. All questions, issues, matters and things not hereby disposed of are hereby reserved by the court for its further adjudication, and any party to this cause may at any time apply to the court for further relief at the foot of this decree in respect of any matters not herein specifically provided for. **For the purpose of making any further order or decree in relation to any matter arising in connection with this decree, or any sale thereunder, the present term of this court is continued."** (*Emphasis supplied*)

2. The May Term, 1939, of the District Court ended on Tuesday, October 31, 1939 (Organic Act, Sec. 42, *ante*, footnote 1, p. 2); and the next term, the November Term, began the following day, Wednesday, November 1, 1939.

3. **Three months** (lacking one day) **after** the District Court's entry of the foreclosure decree of September 18, 1939, in the present case, **the Circuit Court of Appeals, on December 15, 1939, handed down its opinion in the *Federal Land Bank* cases, reversing the District Court, and expressly upholding**

the power of the Legislature to give priority to the deferred taxes over antecedent mortgages, and accordingly upholding the validity of Section 5 of the insular Act of July 16, 1936. [*People of Puerto Rico* vs. *Federal Land Bank,* 108 F. (2d) 275, 276-278; copy of opinion in Appendix II, *infra,* pp. 42-48]. Rehearing was denied by the Circuit Court of Appeals the next month, on January 19, 1940 (*People of Puerto Rico* vs. *Federal Land Bank, supra,* 108 F. (2d) 275). No petition for certiorari for review of that decision was ever filed. It stands unassailed. Its correctness has never been questioned in this case. In view of that decision of the Circuit Court of Appeals, so much of the foreclosure decree of the District Court of September 18, 1939, in the present proceeding, as denied priority to the deferred taxes (*ante,* p. 3; R. 72-73) was plainly erroneous. The statute being valid, the deferred taxes were plainly entitled to priority over the mortgages.

4. The date of that decision of the Circuit Court of Appeals in the *Federal Land Bank* cases, December 15, 1939 (as well as that of the Circuit Court's denial of the rehearing, January 19, 1940), was during the November term, 1939, of the District Court,—the next succeeding term after the May term at which the foreclosure decree of September 18, 1939, had been entered; and was, consequently, during the term to which, by the last sentence of the final paragraph, "O", of that decree (R. 85; *ante,* p. 4), "the present term of this court" had been "continued".[3]

The first question here presented is, therefore, of the meaning and effect of that provision of the decree. (*Infra,* "Questions Presented", pp. 9-10).

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[3] "For the purpose of making any further order or decree in relation to any matter arising in connection with this decree, * * *, the present term of this court is continued."

5. Promptly, only eleven days after the decision of the Circuit Court of Appeals, and at the same November, 1939, term of the District Court, this petitioner, the People of Puerto Rico, on December 26, 1939, filed in the District Court its petition ["motion"] for reconsideration (R. 86) of so much of the foreclosure decree of September 18, 1939, as related to the priority of the tax liens. The petition was based on the Circuit Court of Appeals' decision in the *Federal Land Bank* cases.

On January 31, 1940 [still at the same November, 1939, term], and eleven days after the Circuit Court of Appeals' denial of reconsideration in the *Federal Land Bank* cases, the District Court entered its order denying (R. 88-92) this petitioner's request for reconsideration of the foreclosure decree, with reference to the tax lien priorities. The District Court held: FIRST, that, in view of the expiration of the term at which the foreclosure decree was entered [the May term, 1939; *ante*, pp. 2, 4], and of the "finality" of that decree, the court was without power to reopen it, or to reconsider the question of the tax priorities;[4] and, SECOND, that, in any event, the motion for reconsideration should be denied on the merits

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[4] The District Court said (R. 89):

> "Such a decree is clearly a final one for it determines the rights of the parties so that nothing is left to be done but the execution of its provisions. Affirmance of such a decree by the appellate court would end the suit and execution of the provisions thereof by this court would be all that remained to be done. *The reservation in the decree for further directions simply related to such execution and cannot be availed of as rendering it less final or as leaving open points expressly decided by it at the time it was entered.*" (*Italics supplied*)

Whether the District Court had power to bind the Court of Appeals, or this Court, by its subsequent construction of the meaning of its own prior decree in that way, is another question here presented. ("Questions Presented", *infra*, pp. 10-11).

because, as the District Court said (R. 90-92), Section 5 of the earlier Act of August 19, 1933, providing for deferment of taxes (Act No. 10; Appendix III, *infra*, pp. 49-50) had been amended by Act No. 14 of August 24, 1933 (*infra*, Appendix III, pp. 50-51); that (R. 90):

> "* * * After approval of that amendatory Act of August 24, 1933, the tax lien of The People of Puerto Rico on realty was expressly limited to the assessments for the three prior and the current fiscal years. And this was so whether the payment of such taxes had been extended under Act 10 of 1933, or not.
>
> "*Thus at the time the receiver appointed herein went into possession of the properties object of these foreclosure proceedings on or about October 20, 1936*, the tax lien of The People of Puerto Rico was by express statute restricted to the current fiscal year of 1936-1937 and the three prior fiscal years, and this court so held in its decree of September 18, 1939." (*Italics supplied*)

The District Court's error and confusion of the statutes is manifest. **The Act of July 16, 1936** (Appendix III, *infra*, pp. 51-55; *ante*, pp. 2, 5), carrying an emergency clause putting it into immediate effect (Sec. 17; Appendix III, *infra*, p. 55) **had gone into effect more than three months before October 20, 1936,** the date to which the District Court refers as that on which the foreclosure proceedings were begun; and was in effect on that date. It was under that very Act of July 16, 1936 [as (*immaterially*) amended by that of May 13, 1937], that the Receiver's applications for the deferment of these taxes had been made under the District Court's own directions, by its orders of July 9, 1937 [*ante*, p. 2; R. 62, 66]. It was Section 5 of that very same Act of July 16, 1936, which expressly declared that the lien for the deferred taxes,

> "shall have preference and priority over any other lien which already burdens or may be hereafter constituted on said properties",

and expressly amended prior statutes accordingly. It was

likewise that same Section 5 of that same Act of July 16, 1936, which the Circuit Court of Appeals in its opinion in the *Federal Land Bank* cases, *supra*, had quoted and had expressly upheld (*People of Puerto Rico* vs. *Federal Land Bank, supra*, 108 F. (2d) 275, 276-277, *et seq.*; Appendix II, *infra*, pp. 43-44, 48) in reversing the District Court in those cases.

Manifestly the District Court was simply confused in this. The Act of August 24, 1933, to which the Court refers (R. 90, *supra*), had been expressly amended by Sections 5 and 14 of the Act of July 16, 1936, so as to extend "for a period of twenty (20) years" the lien of the deferred taxes (Appendix III, *infra*, pp. 52-53, 54). The sequence of the statutes and of the proceedings, in relation to the history of this case, is in Appendix IV, *infra*, pp. 59-65, "CHRONOLOGY".[5]

6. This petitioner, The People of Puerto Rico, did not perfect any appeal from the January 31, 1940, order of the District Court,[6] but considered it interlocutory, and that

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[5] It should be said that the confusion appears to have started with an erroneous reference (R. 86), in the petion for reconsideration itself, to the Act of 1933, as the basis for the Circuit Court's decision in the *Federal Land Bank* cases; which were really based wholly on the 1936 Act (108 F. (2d), *supra*, 275, 276-277; Appendix II, *infra*, pp. 43 *et seq.*). The District Court correctly points this out (R. 90); but then proceeds (R. 90-91) to fall into its own confusion as to the statutes in force on October 20, 1936, as stated in the text, above.

[6] Petitioner did file a formal "Notice of Appeal" from this order; but one day too late under the Rules of Civil Procedure. The appeal was, therefore, dismissed by the Circuit Court of Appeals (R. 117; Footnote 10, *infra*, p. 18). The Rules of Civil Procedure were then new in Puerto Rico, having gone into effect in relation to the District Court of the United States for the District Court of Puerto Rico only on March 1, 1940 (Footnote 13; *infra*, p. 21). The abortive appeal from the order of January 31, 1940, appears to be immaterial here for any purpose, except as indicating that petitioner never acquiesced in it.

the court still retained the power during the balance of that same term,—[the November, 1939, term of the District Court],—to reconsider the matter and to make such order with relation to the tax priorities as it should deem right. Meantime, the foreclosure sale had proceeded; **the properties had been bought in by the complainant itself in the foreclosure suit, the Bank of Nova Scotia, the respondent here;** and the receiver had turned over possession of the property to the respondent bank as the purchaser. The receiver then presented his final report and account, and this petitioner, The People of Puerto Rico, then [still at the same November, 1939, term of the District Court] filed objections to the report on the same grounds as before, that the receiver, under the Court's directions, had not paid the deferred taxes as a prior claim; and the matter came on for the District Court's decision on the objections.

7. On April 3, 1940 [still at the same November term, 1939, which continued to run, under the statute, until Tuesday, April 30, 1940], the District Court again decided the matter adversely to this petitioner [R. 98-99], still adhering to the position taken in its order of January 31, 1940 (*ante*, pp. 6-8; R. 88-92, *supra*). The People of Puerto Rico, this petitioner, appealed to the Circuit Court of Appeals; which, by its opinion and judgment December 18, 1940, affirmed the April 3, 1940, order of the District Court, refusing to reopen the question of the tax priorities as fixed by the foreclosure decree (*ante*, p. 1; R. 114-119; 116 F. (2d) 379-381).

QUESTIONS PRESENTED

First. Under the circumstances of this case, and particularly in view of the appeals then pending, undecided, in the Circuit Court of Appeals from the District Court's own earlier decisions in the *Federal Land Bank* cases involving the same question of the validity of the insular statute giving priority to deferred real estate taxes, is not

the final sentence of the concluding paragraph of the foreclosure decree of September 16, 1939 ["O", R. 85; *ante*, p. 4], directing that:

> "For the purpose of making any further order or decree in relation to any matter arising in connection with this decree, or any sale thereunder, the present term of this court is continued",

clearly to be interpreted, in accordance with its literal wording, as intended to continue "the present term of this court", "For the purpose of *making any further order or decree* in relation to *any matter* arising in connection with this decree",—including any modification of it with relation to the relative priorities of the deferred real estate taxes that might thereafter become necessary or proper in order to conform to the Circuit Court of Appeals' ultimate decision in the then pending undecided *Federal Land Bank* cases?

Petitioner believes that it should be so construed. The lower courts held the contrary.

SECOND. Should any especial weight be given to the District Court's own subsequent interpretation, at a later term, by its order of January 31, 1940, of the meaning of the final paragraph of the foreclosure decree, as being limited (R. 89) "simply to such execution" ["of the provisions thereof by this court"], "and cannot be availed of * * * as leaving open points expressly decided by it at the time it was entered"?

Is such *subsequent interpretation* by the District Court of its decree at a former term entitled to any more weight than an interpretation by any party to the cause, or by any other lawyer reading the language of the decree?

Or, if so, if the District Court thus retained power over the decree for the purpose of interpreting it authoritatively at a subsequent term, then did it not, in equal measure, likewise retain power to modify the decree so as to make it accord with the law as interpreted by the Circuit Court of Appeals in reversing the District Court in

the *Federal Land Bank* cases, and so as to conform to the statutes of Puerto Rico?

THIRD. Did not the District Court, by virtue of the above quoted final sentence of the concluding paragraph, "O", in the foreclosure decree, continuing the term for the purposes of *"any matter arising in connection with this decree"*, retain power over the matter *during the whole of the next ensuing term,*—the November, 1939, term,—and until its expiration on April 30, 1940, including power to re-open and reconsider the question of the priorities of the deferred taxes *at any time during that term;* and, therefore, to do so, upon the objections of this petitioner to the receiver's final report,—the objections overruled by the order of April 3, 1940 (R. 98-99) from which this petitioner's appeal was taken to the Circuit Court of Appeals in the present case?

FOURTH. Was there not in the foreclosure decree "error apparent" on the face of the decree, within the meaning of Lord Bacon's First Ordinance in Chancery, in that the decree on its face violated the Puerto Rican statute concerning the priority of the lien of deferred real estate taxes; so that, in any event, the District Court had power to reopen and to reconsider it upon the motion for reconsideration, viewed in the light of a bill of review, at the next term following that at which the decree was entered?

FIFTH. Was not the action of the District Court in refusing to exercise the power it had reserved under the final paragraph of the foreclosure decree,—or which it possessed [treating the motion for reconsideration as a bill of review] because of the "error apparent" on the face of the decree in this respect,—to modify the decree at a subsequent term so as to conform to the decision of the Circuit Court of Appeals establishing the validity of the Puerto Rican statute and the consequent priority of the deferred taxes,—and was not the action of the Circuit Court of Appeals in affirming the order of the District Court making such refusal, and thereby depriving the public Treasury of Puerto Rico of more than $100,000

of revenue to which it was clearly entitled under the statutes of Puerto Rico,—such a departure by the District Court, and such a sanctioning of such departure by the Circuit Court of Appeals, from the accepted and usual course of judicial proceedings, as to call for the exercise of this Court's power of supervision by *certiorari*?

OPINION OF THE CIRCUIT COURT OF APPEALS

As above stated the Circuit Court of Appeals affirmed the order of the District Court refusing to disturb the foreclosure decree of September 18, 1939. The Circuit Court quoted (R. 116; 116 F. (2d), *supra*, at p. 380), what was said by the District Court in its order of January 31, 1940, denying reconsideration of the foreclosure decree (R. 89; quoted *ante*, p. 6; footnote 4) as to the "reservation in the decree"[7] not "rendering it less final or as leaving open points expressly decided by it at the time it was entered"; and said (R. 117; 116 F. (2d), *supra*, at p. 381):

> "We accept the District Court's interpretation of its own decree".

The Circuit Court also notes (R. 116-117; 116 F. (2d), *supra*, at p. 381) that: "Somewhat similar phraseology in decrees in other cases has been similarly interpreted"[8]; and concludes (R. 118; 116 F. (2d), at p. 381):

> "From this review of the facts it is apparent that the relative priorities of the Bank and the insular government in the mortgaged properties were determined by the decree of September 18, 1939, and had become *res judicata*. These issues could not be raised again at the later stage in the receivership when the

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[7] Paragraph "O", R. 85; *ante*, p. 4.

[8] Citing: *Lewisburg Bank* v *Sheffey*, 140 U. S. 445; *Mayer* v. *White*, 8 Cir., 12 F. (2d) 710; *American Engineering Co.* v. *Metropolitan By-Products Co.*, 2 Cir., 275 Fed. 40; *Kiehn* v. *Dodge County*, 8 Cir., 19 F. (2d) 503. But these cases fail to support the Circuit Court's opinion in this. *Confer, infra*, Point III, pp. 26-28.

court was considering whether to approve the receiver's final report.'"[9]

PETITIONER'S POSITION

As above indicated, petitioner, The People of Puerto Rico, believes that, in view of the final paragraph "O" (R. 85) of the foreclosure decree continuing "the present term" for the purpose of making any further order or decree in relation "to any matter arising in connection with this decree", the District Court possessed the power, during the whole of its next term, to amend the decree so as to conform to the law as established by the decision of the Circuit Court of Appeals in the *Federal Land Bank* cases upholding the validity of the Act of the Legislature of Puerto Rico of July 16, 1936, and, consequently, the priority of the deferred taxes; and that, therefore, it was the District Court's plain duty to modify the foreclosure decree accordingly and to preserve to the public revenues of the insular government the more than $100,000 of those taxes to which the Treasury was entitled under the Puerto Rican statutes. And that, in in any event, there was "error apparent" on the face of the foreclosure decree itself, within the meaning of Lord Bacon's First Ordinance in Chancery, in that it shows on its face that it was in direct violation of the Puerto Rican statute [whose validity was shortly afterwards definitely established by the decision of the Circuit Court of Appeals in the *Federal Land Bank* cases]; so as to be open to re-examination by the District Court at its next following term, upon the motion for reconsideration,

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[9] Citing: *Turner* v. *Farmers' Loan & Trust Co.*, 106 U. S. 552, 555-556; *Central Trust Co.* v. *Grant Locomotive Works*, 135 U. S. 207; *Hinckley* v. *Gilman, etc. R. R. Co.*, 94 U. S. 467, 469; *Mayer* v. *White*, 12 F. (2d) 710; *Reed* v. *Allen*, 286 U. S. 191. Those cases, however, hold only that, once a matter has become *res judicata*, it cannot be reopened at a subsequent term.

treated as a bill of review. And hence that the District Court was in error in failing to make the modification and to recognize the priorities of the Treasury; and and that the Circuit Court of Appeals likewise erred in sustaining the District Court in such failure. And that such failure of the lower courts to apply and enforce the plain statutory rights of the public Treasury in this respect constituted such a departure by the District Court, and such a sanctioning of the departure by the Circuit Court of Appeals, from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision by the writ of *certiorari*. And, further, that the cases cited by the Circuit Court of Appeals in support of its opinion (R. 116-117, 118; 116 F. (2d), *supra*, at pp. 380, 381; *ante*, pp. 12, 13, Footnotes 8 and 9) do not support it; but, on the contrary, rather indicate misapprehension or misapplication of those decisions.

STATUTES

The Act of the Legislature of July 16, 1936, here principally involved, together with other cognate insular statutes and provisions of the insular Civil Code and of the Mortgage Law are in Appendix III, *infra*, pp. 49-58.

REASONS FOR GRANTING THE WRIT

As above indicated, ("Questions Presented," *ante*, pp. 9-12; and "Petitioner's Position", *ante*, pp. 13-14), it is believed that the lower courts, the District Court of the United States for the District of Puerto Rico, and the Circuit Court of Appeals for the First Circuit in affirming the District Court, have here fallen into serious error in an important matter of federal law and procedure, seriously affecting the public revenues of the Government of Puerto Rico, a Territory of the United States. That the District Court, in its procedure in this case, in failing to exercise its power to re-open its foreclosure decree of September